



BRB No. 15-0213

SILKE DAVIS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
AAFES)	
)	
and)	
)	
ARMY CENTRAL INSURANCE FUND)	DATE ISSUED: <u>Nov. 16, 2015</u>
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Compensation Order Award of Attorney's Fees of Charles Lee, District Director, and the Compensation Order Award of Attorney's Fees (on Reconsideration) of Kristina Hall, District Director, United States Department of Labor.

Daniel F. Read, Durham, North Carolina, for claimant.

Lawrence P. Postal (Seyfarth Shaw LLP), Washington, D.C., for employer/carrier.

Ann Marie Scarpino (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Mark A. Reinhalter, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Compensation Order Award of Attorney's Fees of District Director Charles Lee and the Compensation Order Award of Attorney's Fees (on Reconsideration) of District Director Kristina Hall (Case No. 06-195811) rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, as extended by the Nonappropriated Fund Instrumentalities Act, 5 U.S.C. §8171 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984).

Claimant was injured in 2005 during the course of her employment for employer as a security guard at Fort Bragg, North Carolina. The parties entered into a Section 8(i) settlement, 33 U.S.C. §908(i), wherein employer agreed to pay claimant \$32,000 for all past, present, and future compensation benefits in exchange for the termination of its compensation liability. The parties agreed that employer would remain liable for future medical care, including psychiatric care and that employer would pay claimant's counsel an \$8,000 attorney's fee. The administrative law judge approved the parties' agreement in 2011. Subsequently, on February 4, 2015, claimant's counsel filed a fee petition with the district director for services rendered between July 19, 2012 and January 28, 2015, related to assisting claimant in obtaining medical care for her injury. Counsel sought a fee of \$4,232.25, representing 18.18 hours of legal services at an hourly rate of \$225.

On February 9, 2015, Employer objected to the fee petition, asserting it had not denied, or withheld authorization for, medical treatment or medications. Employer also contended the fee petition was not sufficiently itemized to permit objections to specific entries. On February 10, 2015, a claims examiner in the district director's office wrote a letter to claimant's counsel, recommending that counsel respond to employer's objections and to give specific instances "where [medical] services were required in lack of Employer/Carrier's failure to respond." On February 18, 2015, claimant's counsel responded with an annotated fee petition and he also referenced medical reports he had sent to the district director which discuss claimant's "frustration with how her claim is being handled." *See* Feb. 18, 2015 letter at 1.

On February 26, 2015, District Director Charles Lee issued a compensation order summarily ordering employer to pay the requested fee "upon finding the application for fee fair and reasonable." Employer filed a motion for reconsideration, contending that the district director did not discuss its objection that it had never denied claimant medical treatment. Attached to employer's motion are copies of correspondence between carrier and claimant's counsel purporting to show that employer authorized the requested treatment.

On April 8, 2015, District Director Kristina Hall¹ issued a Compensation Order in which only the date and signature were different than the original fee award; the district director again summarily awarded claimant's counsel the requested fee payable by employer.

Employer appeals the fee award. Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs, responds that the Board should vacate the fee award and remand the case for the district director to address employer's objections to the requested fee and to provide a rationale for any fee award payable by employer. Employer filed a reply brief in support of its appeal.

We agree with employer and the Director that the district director's fee award cannot be affirmed. Neither of the district director's two orders addressed employer's objections and counsel's response thereto or provided a basis for the finding that employer is liable for claimant's counsel's fee. Therefore, we vacate the fee award and remand this case for further consideration. *See Jensen v. Weeks Marine, Inc.*, 33 BRBS 97 (1999). On remand, the district director should fully discuss employer's objections to counsel's fee petition and counsel's response thereto and provide an adequate rationale for her findings as to the compensability of counsel's services and the liability therefor. 33 U.S.C. §928; *see Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP [Moody]*, 474 F.3d 109, 40 BRBS 69(CRT) (4th Cir. 2006); *Virginia Int'l Terminals, Inc. v. Edwards*, 398 F.3d 313, 39 BRBS 1(CRT) (4th Cir. 2005), *cert. denied*, 546 U.S. 960 (2005); *W.G. [Gordon] v. Marine Terminals Corp.*, 41 BRBS 13 (2007).

¹ Ms. Hall succeeded Mr. Lee as the district director for the Sixth Compensation District in Jacksonville, Florida.

Accordingly, the district director's Compensation Orders awarding an attorney's fee are vacated and the case is remanded for further findings in accordance with this opinion.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge